

MINUTES OF BOARD OF APPEALS MEETING OF JUNE 5, 2012: Town Hall Banquet Room

I. ADMINISTRATIVE BUSINESS

Vice-Chairman Joseph Borelli – Opened the meeting at 6:00 p.m.

Quorum/Attendance

Members Present – Vice-Chairman Joseph Borelli, Daryl Manchester, Francis J. Cox, Peg Cook, Rene Fleurent, Jr. (Assoc.), Kenneth Kendall (Assoc.), Building Commissioner Wayne Fostin, Assistant Building Commissioner Andrew Bobola

Absent – Peter DeTerra, Al Silva (Assoc.) and Joseph Morra (Assoc.)

Bills: Fairhaven Neighborhood News \$170.00 for legal ads for June hearing. Mr. Fleurent, Jr. motioned to sign the invoice. Mr. Cox seconded. The vote was unanimous.

II. PUBLIC HEARING:

1. Petitioner: Donna McKenna, Arsene Street, Plat 28, Lots 8, 8A & 9; Book 1490, Page 201 and Book 3326, Page 266; Administrative Appeal: Administrative Appeal of building permit for wind turbines.

This is a continued hearing from May 1, 2012.

Mr. Cox motioned to open the hearing. Mr. Kendall seconded. The vote was unanimous.

Mr. Borelli announced that he and member Peg Cook could not vote on the question. Mr. Borelli as an abutter has a financial interest in the matter and Ms. Cook was not present to hear all of the presentations. A quorum does not exist to vote on the matter. Attorney DeNardis objected to the presence of Town Counsel Thomas Crotty. Attorney DeNardis was given a copy of the letter signed by Selectmen Chairman Brian Bowcock, dated April 30, 2012, which stated that there is no conflict of interest in Attorney Crotty advising the zoning board of appeals. Attorney DeNardis took exception to the statement and stated there clearly is a conflict of interest for Attorney Crotty to represent the Building Commissioner and the Town and advise the board of appeals in this hearing. Mr. Daryl Manchester stated that her objections are so noted and are part of the record. Attorney DeNardis noted the petition was initially presented in March. The matter needs to be expedited and be voted. Discussion to set an agreeable date ensued.

Mr. Cox motioned to continue to June 14, 2012 at 6:00 PM. Mr. Fleurent, Jr. seconded. The vote was unanimous.

2. Petitioner: Edward Ducary, 474 Sconticut Neck Road, Plat 29, Lot 3A; Book 2653, Page 339; 198-23 Home Occupation B-4: A Special Permit is required for a Home Occupation in the building trades.

The petitioner is the owner of Ocean Options and is a licensed contractor. He has lived at this address for the past 25 years and would like to use it as his business address. Mr. Fleurent, Jr. read 198-23 of the By-Laws and asked the petitioner if he understood the requirements. The petitioner stated he guarantees compliance.

Mr. Cox motioned to grant the Special Permit. Mr. Kendall seconded. The Vote was passed 5-0.

3. Petitioner: Michael Bobola, 11 Maple Avenue, Plat 3, Lots 85-86; Book 8737 and Page 211 and Book 9572 and Page 255; 198-18: Lot 85 Short 55' of the required 100' frontage and 11,820 sq ft short of the required 15,00 sq ft all within a RA District.

Mr. Manchester and Mr. Bobola removed themselves from the hearing. The petitioner was represented by Attorney Phil Beauregard, New Bedford, MA. The property consists of two lots that were purchased separately a few months apart. Under Massachusetts law the two lots became merged because they were then owned by one party. One lot contains a dwelling and one lot contains a 4 car garage which historically is used as rental storage. Due to financial hardship the owners now want to return the property back to two separate lots so they can sell the lot containing the 4 car garage. The owners are willing to condition the request to require the existing garage remain and in its present use.

Veronica Booth, 8 Maple Avenue, stated she is against the request. Ignorance of the law is not an excuse. Many have financial hardships in the current economics. She would like this to be continued.

Jim Booth, 8 Maple Avenue, does not want to see a buildable lot and would like the use encumbered.

Linda Ferland, 6 Maple Avenue, supports the request but needs guarantee that it will never be buildable.

Donald Tucker, 14 Green Street, stated the same.

Channing Hayward, 19 Maple Avenue, asked what the variance is for. Attorney Beauregard replied to make the lots as they were before with a recorded condition to maintain them as such.

Resident, 14 Maple Avenue, asked if the garages could be used for business storage. Mr. Fostin responded yes with a special permit but the use cannot be more harmful than the historical use.

Ms. Jane Brayton, 20 Nelson Avenue, questioned the use of financial hardship as a reason for granting a variance. The financial hardship must run with the land per the law, not the owner.

Questions by the Board:

Mr. Borelli stated the existing lot is already a non-conforming lot. The variance will create two more non-conforming lots. Attorney Beauregard responded that prior to 2008 the use was exactly as what is being requested with no detriment to the neighborhood. The Building Commissioner stated the lots would be two separate parcels under zoning and would create the potential for a buildable lot. Additionally the lot with the garages would be an accessory structure on a lot without a principle structure which is not allowed in the By-Law.

Mr. Cox questioned the financial hardship if both the house and garage are rental properties.

Mr. Fleurent, Jr. asked if the petitioner would object to continuing the hearing so that the Board could resolve its questions. Attorney Beauregard stated they do not object to continuing the hearing to July 3, 2012 and asked that Town Counsel review the questions raised by the Board.

Mr. Cox motioned to continue the hearing to July 3, 2012 and to seek Town Counsel's advise.

Mr. Kendall seconded. Vote was unanimous.

4. Petitioner: Scott Hyman, 54 Bayview Avenue, Plat 28A, Lot 439; Certificate 22146; 198-22: Short 5' of the required 5' setback for an accessory structure in a RA District. 198-18: 10% over the maximum allowed building coverage of 30% in a RA District.

This is a repetitive petition that was granted by the Planning Board as attested by the decision dated February 28, 2012 a copy is part of the record. The petition was originally denied by the Board of Appeals in 2011 because there was no one present to represent the petitioner and explain the request. The petitioner subsequently modified the shed structure that required the variance and received approval from the Planning Board as a significantly altered request. Thus the petition is before the Board presently.

It was determined that Mr. Fleurent, Jr. may have a conflict of interest with the request and may not be allowed to vote. The petitioner asked to be placed on the proposed June 14, 2012 agenda.

Mr. Cox motioned to continue the hearing to June 14, 2012 at 6:00 PM. Mr. Kendall seconded. The vote was unanimous.

5. Petitioner: Bernard J. Ristuccia, Jr., 24 Nelson Avenue, Plat 43, Lots 37, 38, Book 9498 and Page 120; 198-18: Short 6' of the required 30' rear setback, short 12' of the required 30' front setback and 1% over the maximum allowed building coverage of 15% all within a RR District. Special Permit is required for expansion of a non-conforming lot.

The petitioner was represented by Ken Ferreira, PE, Ferreira Engineering, New Bedford. The proposal had been before the Board previously but is now newly redesigned after meeting with the abutters. The proposed dwelling will be on pilings, will be smaller than the existing dwelling and will be repositioned on the lot with a garage under the structure. The building coverage is presently 17.3% and will be 15.8%; the side setback is presently 40' and will be 43'; the front setback is presently 15' and will be 21' in order to prevent blocking abutters' views. The proposal is FEMA compliant and has Conservation Commission and Board of Health approval.

Attorney John Markey, New Bedford stated he represents a group of the abutters and reports that after working with the abutters, the neighbors are in support of the proposal. Abutter Jane Brayton, 20 Nelson Avenue concurred.

Mr. Cox motioned to approve the Special Permit. Mr. Fleurent, Jr. seconded. The motion passed 5-0. Mr. Fleurent, Jr. motioned to approve the Variance. Mr. Kendall seconded. The motion passed 5-0.

III. OTHER BUSINESS:

None

ADJOURNMENT

Mr. Kendall moved to adjourn the meeting. Mr. Cox seconded. The vote was unanimous. The meeting was adjourned at 7:30 p.m.

Respectfully Submitted,
Patricia Fowle, Secretary
To the Board of Appeals